

§218.110

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subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.108 without modification (except for the period of validity) is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.100(b), a Letter of Authorization issued pursuant to §§216.106 and 218.107 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart M—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training Range Complex (NWTRC)

SOURCE: 75 FR 69319, Nov. 10, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added, effective Nov. 9, 2010 through Nov. 9, 2015.

§218.110 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Offshore area of the Northwest Training Range Complex (NWTRC) (as depicted in Figure ES-1 in the Navy's Draft Environmental Impact Statement for NWTRC), which is bounded by 48°30' N. lat.; 130°00' W. long.; 40°00' N. lat.; and on the east by 124°00' W. long or by the shoreline where the shoreline extends west of 124°00' W. long (excluding the Strait of Juan de Fuca (east of 124°40' W. long), which is not included in the Offshore area).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(i) AN/SQS-53 (hull-mounted active sonar)—up to 215 hours over the course of 5 years (an average of 43 hours per year);

(ii) AN/SQS-56 (hull-mounted active sonar)—up to 325 hours over the course of 5 years (an average of 65 hours per year);

(iii) SSQ-62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 4430 sonobuoys over the course of 5 years (an average of 886 sonobuoys per year)

(iv) MK-48 (heavyweight torpedoes)—up to 10 torpedoes over the course of 5 years (an average of 2 torpedoes per year);

(v) AN/BQS-15 (mine detection and submarine navigational sonar)—up to 210 hours over the course of 5 years (an average of 42 hours per year);

(vi) AN/SSQ-125 (AEER)—up to 745 buoys deployed over the course of 5 years (total combined with the AN/SSQ-110A (IEER)) (an average of 149 per year);

(vii) Range Finders—up to 900 hours over the course of 5 years (an average of 180 hours per year); and

(viii) PUTR Uplink—up to 750 hours over the course of 5 years (an average of 150 hours per year).

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(i) Underwater Explosives:

(A) 5" Naval Gunfire (9.5 lbs);

(B) 76 mm rounds (1.6 lbs);

(C) Maverick (78.5 lbs);

(D) Harpoon (448 lbs);

(E) MK-82 (238 lbs);

(F) MK-48 (851 lbs);

(G) Demolition Charges (2.5 lbs);

(H) AN/SSQ-110A (IEER explosive sonobuoy—5 lbs);

- (I) HARM;
- (J) Hellfire;
- (K) SLAM; and
- (L) GBU 10, 12, and 16.

(ii) Training Events:

(A) Surface-to-surface Gunnery Exercises (S-S GUNEX)—up to 1700 exercises over the course of 5 years (an average of 340 per year).

(B) Bombing Exercises (BOMBEX)—up to 150 exercises over the course of 5 years (an average of 30 per year).

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 60 exercises (total combined with the AN/SSQ-125A (AEER)) over the course of 5 years (an average of 12 per year).

(3) The taking of marine mammals may also be authorized in an LOA for the activities and sources listed in §218.110(c)(1) should the amounts (*i.e.*, hours, dips, number of exercises) vary from those estimated in §218.110(c)(2), provided that the variation does not result in exceeding the amount of take indicated in §218.112(c).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§218.111 Effective dates.

Amended regulations are effective February 1, 2012, through November 9, 2015.

[77 FR 4924, Feb. 1, 2012]

§218.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.117 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.110(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) [Reserved]

(c) The incidental take of marine mammals under the activities identified in §218.110(c) is limited to the species listed in paragraphs (c)(4) and (5) of this section by the indicated method

of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in sonar activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraph (c)(4) and (5) of this section, for that species by more than 25 percent (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (c)(4) and (5), by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—75 (an average of 15 annually);

(B) Fin whale (*Balaenoptera physalus*)—720 (an average of 144 annually);

(C) Blue whale (*Balaenoptera musculus*)—95 (an average of 19 annually);

(D) Sei whale (*Balaenoptera borealis*)—5 (an average of 1 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—45 (an average of 9 annually); and

(F) Gray whale (*Eschrichtius robustus*)—20 (an average of 4 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—635 (an average of 127 annually);

(B) Killer whale (*Orcinus orca*)—70 (an average of 14 annually);

(C) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—20 (an average of 4 annually);

(D) Mesoplodont beaked whales—75 (an average of 15 annually);